

THE RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

EDITORIAL BOARD

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THE RECORD is published at the House of the Association, 42 West 44th Street, New York, 18.

Volume 3

June 1948

Number 6

Association Activities

AT THE ANNUAL MEETING of the Association held on Tuesday, May 11, the following officers and members of Committees were elected:

PRESIDENT

Robert P. Patterson

VICE PRESIDENTS

Edward S. Greenbaum
John M. Harlan

Philip J. McCook
Arthur H. Schwartz

Bethuel M. Webster

TREASURER

Chauncey B. Garver

SECRETARY

Whitman Knapp

EXECUTIVE COMMITTEE

CLASS OF 1951

Edwin A. Falk

CLASS OF 1952

Edward W. Bourne
Sinclair Hatch

H. H. Nordlinger
Boykin Cabell Wright

COMMITTEE ON ADMISSIONS

CLASS OF 1951

Walter L. Brown
Garrard W. Glenn
Hugh J. Grant

Milton A. Kramer
Roy M. D. Richardson
Harry Silverson
Josiah Willard

COMMITTEE ON AUDIT

Dana Rodman Koons

Alexander Caldwell Neave
Sigourney Butler Olney



ACTION WAS TAKEN at the Annual Meeting approving a report of the Committee on Administrative Law which recommended that neither the model State Administrative Procedure Act nor any similar general statute would be a desirable addition to New York law.

The meeting recommitted to the Committee on International Law its report dealing with the United Nations' Draft Covenant on Human Rights and Draft Declaration on Human Rights.

Also recommitted for further study was the report of the Committee on Labor and Social Security Legislation on the advisability of changing the New York State Labor Relations Law.

Amendments to the By-laws were adopted increasing the jurisdiction of the Committee on Trade-Marks so that it would have power to consider questions dealing with trade regulations.

A new standing committee was established to be known as the Committee on Municipal Affairs. The Committee's grant of authority reads as follows:

7a. "A Committee on Municipal Affairs of twenty-four members and a chairman. It is charged with the duty of

continuous survey of the affairs of the City, including legislation by the City Council or delegated legislation by administrative order, the functioning of the quasi-judicial system of the City, advice to the mayor in appropriate situations, and review of the operations of the office of the Corporation Counsel. The Committee shall have the duty of promoting or opposing particular proposals, enactments or orders on behalf of the Association, whenever, in the judgment of the Committee, such action is advisable. Its jurisdiction shall include matters of local taxation, but shall not include matters involving real property law, criminal law or criminal procedure or aeronautics."



THE EXECUTIVE COMMITTEE at its last meeting authorized the establishment of a Special Committee on the Improvement of the Divorce Law. The Committee is empowered to take appropriate steps to promote the Association's legislation designed to liberalize the divorce laws, and it is also within its jurisdiction to cooperate with other organizations seeking to have a commission established for the study of the divorce laws.



ON MAY 14 the committee chairmen held a dinner in honor of Mr. Tweed and Judge Patterson. An appropriate gift was presented to Mr. Tweed. The committee in charge of the dinner consisted of Jule E. Stocker, Chairman, John A. Bross, James H. Halpin, Henry Harfield, Alfred Heuston, Orison Swett Marden, and Franklin E. Parker, Jr.



IN THIS number of THE RECORD is printed an important report by a subcommittee of the Committee on Labor and Social Security Legislation dealing with recent legislation which would amend the Fair Labor Standards Act and, in particular, with the so-called Ball Bill, S. 2386. The report will be considered by the

whole Committee and, as finally approved by it, presented to the Association for action next fall.



IN THE ANNUAL REPORT of the Judiciary Committee will be found an important resolution adopted to clarify and make uniform the procedures of that Committee in its designations of candidates for judicial office. The resolution as approved by the Committee and by the Executive Committee is as follows:

WHEREAS it is important that the policy and procedure of the Committee on the Judiciary and of the Association may be understood by the membership and the public; and

WHEREAS the New York County Lawyers Association has recently adopted a by-law amendment under which its board of directors is required to classify candidates for judicial office as exceptionally well qualified (to be used only in the case of a judge completing with distinction a full elected term), well qualified, qualified, or not qualified, as the case may be; and

WHEREAS it is desirable that so far as possible statements concerning candidates for election made by this Association and by the New York County Lawyers Association use the same words to describe the qualifications of candidates and that the meaning of those words be known to the public; it is

RESOLVED that in stating the qualifications of a candidate for election the Committee, in the resolution submitted to the Association, and the Association, in the resolution adopted at a meeting, will designate him as not qualified, qualified, or well qualified for the office for which he is a candidate, such words being defined as follows:

"Not qualified" means that the candidate does not possess the character and reputation, ability, experience, and legal education necessary for satisfactory discharge of the duties of the office.

"Qualified" means that the candidate possesses the character and reputation, ability, experience and legal education for satisfactory discharge of the duties of the office.

"Well qualified" means that the candidate possesses the character and reputation, ability, experience and legal education for distinguished discharge of the duties of the office.

FURTHER RESOLVED that when the public interest justifies

the Committee will submit a further resolution to a meeting of the Association recommending that the Association urge, and take measures to secure, the election or defeat of a particular candidate.



THE LEGAL AID Committee, Orison Swett Marden, Chairman, has reported that Mr. John D. Rockefeller, Jr., in response to the solicitation of the Committee has agreed to contribute fifteen thousand dollars toward the three-year requirement of forty-five thousand dollars for the extension of Legal Aid Service to the United States District Court for the Southern District. This generous gift is conditioned on the raising of the additional thirty thousand dollars by December 31, 1948. The Committee is actively engaged in soliciting the additional contributions and has itself contributed to the fund.



SO MANY MEMBERS have commented favorably on the pictures in the last number of THE RECORD that it is proper that the name of the photographer should be made public and due credit given to him. Robert L. Golby, a member of the Entertainment Committee, is the photographer, and he has generously made a gift to the Association of a large number of candid snapshots taken at the various social functions held at the House of the Association. Those who attended the Association's photographic show last year will also remember that a number of Mr. Golby's more serious camera studies were on display.



THE OPENING OF the Members' Exhibition of paintings, drawings, and sculpture held on May 4 was highly successful. It was said that the quality of the paintings was higher than last year's, and several members exhibited their work for the first time. A popular vote was taken, with the result that the following were winners in their respective classes: *Oils*: "Sea Gulls" by Alexander Lindey, first; "Still Life, Abstract" by Samuel A. Berger.

second. *Water-Colors*: "Kingston, N.Y." by Alexander Lindey, first; "Smokestacks at Aruba" by Freda S. Fineman, second. *Sculpture*: "Albert Sawyer, Lawyer" by George Nebolsine, first; "Horse (Prancing)" by Joseph Larocque, second; and "Lioness and Cubs" by Joseph Larocque, third.



THE FORUM on Activities of the Organized Bar, held at the House of the Association on April 22, 1948, was well attended, and there was an interesting afternoon and evening discussion, presided over by Mr. Tweed and led by the following speakers: William Dean Embree, Miss Soia Mentschikoff, the Honorable Samuel I. Rosenman, the Honorable Henry P. Chandler, the Honorable Learned Hand, and the Honorable Tappan Gregory, president of the American Bar Association.

Three other educational programs were held, and all were attended by large audiences. They were the Symposium on Foreign Funds, on May 10, presided over by Otto C. Sommerich and having as leaders of the discussion Harvey Reeves, Henry I. Fillman, Dr. Martin Domke, Dr. Max Meyer, and Malcolm Mason, Chief of the Legal Branch, Office of Alien Property.

On April 27 Milton Handler opened the first of what is to be a series of informal meetings dealing with problems in the field of trade regulations, and on May 12 Walter F. Martineau, First Deputy Superintendent of the State Insurance Department, spoke on The New York State Insurance Department and Recent Legislation.



A NUMBER of members have inquired as to whether the Association would sponsor a special trip for those members who would like to go as a group to the Annual Meeting of the American Bar Association, which will be held this year in Seattle, Washington, from September 5 through September 10. Although the Association has not and cannot organize such a tour, it has made arrangements with the New York Central System to provide

accommodations for groups of eighteen or more who wish to travel together. An announcement of the plan will be mailed to all members and can be discussed with the agents of the New York Central System or the agents of the Milwaukee Railroad. (It should be explained that although the announcement was mailed on June 4, it went out over the signature of Mr. Tweed. This was because of delay by the railroads in getting the announcement printed in time to mail at an earlier date.)



PUBLISHED IN this number of THE RECORD is Mr. Tweed's report on the Association year 1947-1948. As usual, his report is highly readable and contains a full summary of the work done by the committees during the year.



AT THE ANNUAL MEETING on May 11 the chairman of the Executive Committee, Arthur H. Schwartz, announced the creation of a special fund to be known as the Harrison Tweed Fund. This fund, which will be part of the Association of the Bar of the City of New York Fund, Inc., is to be used within the terms of the Constitution and By-laws of the Fund in such a manner as Mr. Tweed may suggest. The amount collected as of May 11, 1948, was \$3,000. Further contributions to the Fund will probably raise this total.

The Calendar of the Association for June

(As of June 4, 1948)

- June 2 *Adjourned Annual Meeting of the Association, 4:45 P. M.*
Meeting and Annual Dinner of Executive Committee
- June 8 Dinner Meeting of Committee on Post-Admission Legal
Education
- June 16 Meeting of Committee on Admissions
Dinner Meeting of Committee on Bankruptcy and Cor-
porate Reorganizations
- June 21 *Adjourned Meeting, 4:45 P. M.*
- June 23 Meeting of House Committee



The House Committee announces that the House of the Association will be closed on the legal holidays, July 5 and Labor Day, September 6.

The President's Letter

To the Members of the Association:

M.
legal
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Asso-
Day,

At the annual meeting on May 11, when I was elected President for the coming year, I had it in mind to make a short speech. But the hour was late, and I asked for leave to extend my remarks in THE RECORD, by the same kind of privilege that so many Congressmen exercise.

The first thing on my mind is to express my deep appreciation of the honor the members of the Association have given me by electing me President of the Association for the coming year. Surely no one who has been away for a span of years could hope for a more cordial welcome home. This mark of friendship on the part of my brothers at the New York bar means more to me than any other distinction I have had the fortune to receive.

I spoke a moment ago about having been in other parts and on other pursuits. Since my return it has been made plain to me that while I was away new paths have been worn with which I was utterly unfamiliar. In my predicament I think of a story Mr. Baruch tells of the speculator who gave his time to speculations in listed securities so completely that every other matter was excluded. His friends made up their minds to give a dinner for him on his birthday. A lady seated next to him did her best to draw him into conversation, but he was non-committal on every topic she brought up. Finally she asked him if he liked Balzac. "Lady," he said, "I never speculate in those unlisted stocks."

That describes my condition when they tell me that some new board has handed down such and such a ruling. The board was an unlisted stock, so far as my knowledge ran.

The next thing on my mind is the awe I must own up to when I consider that I must do my best to fill the shoes of Harry Tweed as President. That will be a hard assignment. All of us are aware of the new vigor he has infused into every time-honored activity of the Association, as well as of the new activities taken on by the Association under his leadership. No one may throw the charge

of "stuffed-shirtism" at this Association. In the line of new activities I sent out scouts to find whether there was anything that Harry had overlooked, anything that might be launched in the future. They scattered about in all directions,—music, drama, art, the press, public relations, and so on,—and they came back singing very low. They reported that unless the Association wanted to go in for a broadcasting station, or a pin-ball gallery, or comic strips, Harry Tweed had exhausted all the promising possibilities.

Our elder statesman, Mr. Burlingham, has said, and is willing to make the statement under oath, that Tweed is the best President the Bar Association ever had. He has known all 33 Presidents, from 1870 to 1948, and can qualify as an expert witness. Each one of us, I am certain, is ready, able and willing to indorse his opinion.

Tweed says in his latest letter that he has had a few disappointments in his work. I would not undertake to contradict him. But I can safely say that the members of the Association have had no disappointments in his leadership. I can also say that if Tweed has any idea that he can now withdraw to a life of splendid isolation,—to fishing, perhaps,—he is quite a distance off the beam. I for one will be knocking at his door early in the day, day after day.

The Bar Association, along with all other man-made institutions, faces the test of usefulness,—usefulness in the lives and careers of its members, usefulness in the administration of justice, usefulness to the community in all its worthwhile activities. In the 80 years of its existence it has never failed or faltered in meeting that test. I am confident that in the days ahead we will not fail or falter.

If there is a more vexing question in this day and age than the problem of human relations, I do not know what it is. In the field of science we have no misgivings. The sweeping advances in scientific discovery and application in the last 100 years have been astounding, and the end is not in sight. But in the field of human relations we are not far above the tribal stage of 1,000 years ago.

The lag in human relations has become so marked that we wonder whether the human race may not destroy itself by the mighty forces it has developed. Science will not stand still. The only hope is in swifter speed in human relations—toward wisdom, tolerance, understanding, and all that we mean when we speak of the rule of law. All groups and gatherings of men and women have their part to take in stepping up that speed, but particularly we lawyers, and particularly this Association. There can be no higher calling.

ROBERT P. PATTERSON

May 24, 1948

Annual Report of the President for 1947-48

Following my own precedents, this report will be in three parts. The first is in the nature of an introduction; the second deals with outstanding events and the activities of Special Committees; the third covers the more or less routine work of each of the Standing Committees.

A. INTRODUCTION

I had hoped that my words in the May issue of *THE RECORD* would be my last. But I reckoned without the Executive Secretary. He reminded me that as things have developed, the President is relied upon to summarize the activities of each Committee. The present system is to include in the Year Book only a few committee reports such as those of the President, Treasurer, House Committee and the Library Committee. The nine numbers of *THE RECORD* cannot fairly be expected to print more than ten or a dozen reports, most of them on special subjects which are to come before Stated Meetings of the Association. It is estimated that as time goes on these numbers will be increased. Meanwhile, of course, every report of every committee is preserved in the Library. In this situation it is reasonable to call on the President to pull together in one place what has happened on almost fifty committee fronts. This is quite an undertaking, particularly for a President who had lulled himself into the belief that his duties would end on May 11th. Before that he could do little to prepare this report because none of the committee chairmen had yet filed theirs. And *THE RECORD*'s deadline for the June issue is May 21st. All of which is by way of apology for the deficiencies of this report.

I have tried to indicate my gratitude to the staff of the Association for their wholehearted cooperation and genuine spirit of outgiving. It is a mystery to me how they have kept good-natured in the face of the ups and downs of the building program, the ins and outs of the various activities and the temperamental affirmatives and negatives of the President. I hope that the cessation of

building hostilities, the leveling out of committee schedules and the substitution of a good organizer in the presidency will make life easier for the staff. Saying which I remember that they have all kept constantly reiterating that they do not want easy lives but enjoy, more than anything else, the vagaries and uncertainties of life in the service of the Association.

Several things have happened since the letter which I wrote for the May issue of *THE RECORD*. For one thing, I was subjected to those photographs and encomiums. It was something of a shock that my fellow editors could depart so far from editorial ethics as to proceed secretly and in obvious violation of the statutes of the State of New York. However, I am thankful that the photographs were not more incriminating and that Messrs. Burlingham and Pepper were selected to bestow the bouquets. They may have been led astray in their sentiments but they adhered to the highest standards of expression. So I bow to Paul De Witt, Whitman Knapp and Fate. If the editors can continue to get such good writers—but assign them better subjects—*THE RECORD* has a great future.

There was also the presentation to the Association of the Adirondacks landscape painted by James N. Rosenberg. This was a magnificent gift and it is the more to be appreciated because it was specially painted on short notice to meet the deadline of the May meeting of the Executive Committee. The artist has told me that frequently he worked into the midnight hours. The Executive Committee has appropriately thanked Mr. Rosenberg but I want to add my own personal thanks for the painting and the mind and heart behind it. So far as I know this is the first gift by a member of the Association of his own artistic creation. Perhaps it will lead to further gifts so that the Supper Room may be completely decorated with the work of members of the Association.

I record my gratitude to the members of the Executive Committee of the past three years who have contributed to a fund which I am told amounts to something over \$3,000 and which is to be spent by the House Committee subject to my individual

approval. I would have lacked the imagination necessary for the inspiration of this gift. It will serve the interests of the Association and at the same time give me a lot of fun. This is merely another example of the generosity of the Executive Committee throughout and their willingness to do whatever could be done to make the House of the Association a happier place.

Another event occurred on May 7th when, just as the sun was going down, Demosthenes moved from his central position dominating the entire ground floor (and, incidentally, destroying the contour of things) over to the niche on the West wall. This was one of the first changes that I determined upon but such was the obstinacy of Demosthenes that it took me three years to get it done.

On May 14th the committee chairmen gave a dinner attended by almost all of those who have acted in that capacity during the last three years. They said nice things about me and presented me with a very handsome silver cigarette box inscribed in evidence of their "appreciation and affection." I am glad to accept it in the same spirit. It will keep bright the memory of these last three years.

In accordance with Congressional practice, I beg leave to extend in *THE RECORD* my remarks at that dinner which were necessarily abbreviated by reason of short notice and a piece of steak in my esophagus. So extended, they are:

"Last night at the dinner of the Entertainment Committee we were talking about the beauty, utility and livability of the House of the Association, and saying how essential it is that rooms be used in order that their character may develop in sympathy with the character of those who occupy them. Here men who belong to the profession of the law—it is a great profession—breathe and sweat and talk and work and eat and drink. Looking into the future, coming generations of lawyers will do those things until in the mass there will have been a multitude whose bodies have breathed and whose minds have created in these rooms.

"Then this morning as I was shaving, I thought of the Inns of Court in London where through the centuries bar-

risters have lived and worked and played and laughed and which we in America so respect and love that we are seeking at great expense to restore their beauty and usefulness. And I wondered whether it were not permissible faintly to hope that we may be just starting to create here in the House of the Association an atmosphere which in time will bring forth something comparable to the traditions of the Inns of Court."

B. ASSOCIATION ACTIVITIES DURING THE YEAR

1. *Office of Executive Secretary.* No one can question the efficiency with which the work of this office has been conducted by Paul De Witt. It has been apparent for a long while that there was more work to be done than one man assisted only by a secretary could handle. Accordingly, next year Mr. De Witt will have an assistant whose duty it will be to relieve him of as many as possible of the routine jobs which have heretofore been a part of his work. This will free him to give more time to things on higher levels.

2. *Auxiliary Members.* The number of Auxiliary Members is disappointing from one point of view but it is also encouraging that something over one hundred members of the Bar of less than three years' standing have seen fit to pay these dues, notwithstanding that they are denied the right to hold office or to vote. I believe that as time goes on this number will be greatly increased and that we shall have a very much larger group of newcomers at the Bar to rely upon for committee work. Perhaps eventually they will prove themselves worthy of the suffrage.

3. *Number of Members.* During the Association year the number of Associate Members, meaning thereby those who do not live or practice in New York City and are, therefore, ineligible for Active membership, has increased to 669. The number of Sustaining Members paying an additional \$50 of annual dues has increased to 774. As I have said so often—perhaps too often—my goal has been one thousand. I still believe that is a fair and reasonable number to seek and that if we keep on seeking, we shall find them.

The number of Active Members is a test of the healthiness of the Association. As of April 30, 1945, the number of Active Members including those absent or in the service, was 3,267. As of April 30, 1948, the number was 3,749. The three Chairmen of the Committee on Increase of Membership, Leonard P. Moore, Arthur Markewich and Carlyle E. Maw, deserve the credit for this.

4. *Building Improvement Program.* In some ways this is a sad story. In other ways it is a happy record. You will not believe me when I say that a year ago the contractor prophesied completion in September, 1947. Fortunately, nobody relied upon that prophecy. But even so, we did not expect all the delays which have followed one after the other. All except two are behind us now. The new elevator in the northeast corner of the building is not yet in operation. And until it is, the elevator which is in substitution for the old one in the center of the building cannot be installed.

Otherwise, rather few regrets need be indulged in connection with the building operation. While the amount of money spent was colossal in the vision of any previous era, it was probably spent as well as it could have been. A few minor things remain to be done as earnings become available, such as the refurnishing of the three rooms on the ground floor. And there is one substantial job to be done, the doing of which would in the end more than pay for itself. This is the conversion of the lantern or clerestory above the Library reading room into either rentable space or offices for the staff of the Association. A by-product would be improvement in the reading room itself. Otherwise, the Home of the Association probably will serve its purposes for another half century.

I hope that if the incipient demand for something in the way of snack luncheons develops, a way may be found to meet it either in the east room on the ground floor or upstairs in the Supper Room. The objective must be to make the House of the Association more and more responsive to the needs of the membership.

I most emphatically want to tell the membership that I appre-

ciate their patience in refraining from vociferous complaint as disturbing work has dawdled along and in giving me their blind confidence as the money has been swallowed up by unseen and unseeable wires, conduits, pipes, accessories, staircases and elevator shafts.

5. *Association Finances.* In the pre-war year ending in May 1941, the income from all sources was \$234,000; in the year ending in May 1945, it was almost exactly the same; in the year ending in May 1948, it was \$331,000. This is an increase of 42%. It is attributable entirely to increased Active Member dues, Sustaining Member dues and initiation fees. But, of course, expenses went up proportionately, partly because of rising costs and partly because of increased activities. As I have so often said, the only thing that has saved us from an increase in dues is the fact that whereas in 1943 there were only 153 Sustaining Members, there are now 774. But there must be more if the Association is to continue its activities and to keep out of the red.

The figures I have given do not include income from the Bar Building which has shown a substantial profit in recent years but which cannot be relied upon to do so indefinitely. It is noteworthy that initiation fees have traditionally been treated as current income. It is the money from this source as well as from the dues of Sustaining Members which has enabled the Association to keep in the black in the last three years. It is on the assumption that initiation fees will continue in about the same amount for the year ending in 1949 that next year's budget balances. It is, however, an inescapable fact that the recent increase in the number of new members cannot continue at the same rate forever; it was largely due to the backlog of prospective members built up during the war. The hope for the future lies in more Sustaining Members.

6. *Endowment Fund.* It will be remembered that the endowment fund was organized two years ago in order that gifts for the benefit of certain of the purposes of the Association may be made to it and be deductible for purposes of income and estate taxes.

To date it has received \$3,398 in cash and \$11,100 in 3% Notes of the Association due in 1961 which have been turned into it by members. The hope is that the number and amount of such contributions will increase and that a custom of testamentary gifts to the Association may spring up.

7. *Business Transacted at Stated Meetings.* At some of the Stated Meetings the attendance was excellent; at others it was not so good. Under the constitution, meetings are scheduled for October, December, January, March and May. This is a logical spacing. But there is the difficulty that as a generality the committees are not ready to produce substantial matters for action by the Association until after the first of January. Thus, there is not always enough business for the meetings before that and there is apt to be too much for the later meetings.

I am ready to admit—although reluctantly—that the innovation of having interim reports by a half dozen committee chairmen at each Stated Meeting has not been a success. I am not sure that I know what the reason is, but that is unimportant. I would suggest that in the future such reports be made only by chairmen specially selected on account of recent interesting activities of their committees.

8. *Legal Referral Service.* The statistics on this are as follows: Since July 1, 1946, over 4,000 applicants have come in for interviews, of whom more than 2,000 have been referred to a lawyer on the panel. This is an average of about a hundred a month. There are 335 lawyers on the panel already and about another hundred have asked to be placed on it but have not yet been passed on by the Committee. In Chicago and Los Angeles similar services have been established except that the consultation fee is three dollars as compared with five dollars in New York. These offices antedate the New York office by five or six years and are now operating on an average basis of 175 and 150 referrals a month, respectively.

There can be no doubt that this enterprise is very well worth while and constitutes a service to the community which it will come more and more to appreciate and be grateful for. It is a hard

fact, however, that the possibilities of this service are still largely unrealized and that we must show more courage and ingenuity.

9. *The Lawyers Bureau.* This is an employment bureau by another name. The Association and the New York County Lawyers Association each contribute \$5,000 to the annual expense, since registration fees meet only a small part of the rest. However, there is hope that eventually the Bureau may get on a paying basis.

Personally, I indulge the idealistic thought that in New York City there should be one single office to assist both lawyers looking for jobs and lawyers or corporations looking for partners, associates or employees. I do not believe that it is economically sound or practically convenient for a number of law schools each to operate its own employment office. It would be far more efficient if there could be just one to which the employers will continuously confide their needs and to which all lawyers, young and old, looking for a place to work will resort. We are a long way from that ideal but we may get there faster than some people think.

During the six months preceding April 1st, 135 employers about equally divided among (1) business and governmental organizations, (2) law firms and (3) individual practitioners, used the facilities of the Bureau. 700 attorneys are registered with the Bureau, each having paid a five dollar registration fee which is the only charge the Bureau makes. The Bureau arranged 507 employer interviews in the six months period referred to, and in April and May 139 interviews have been arranged. A last minute report shows the following for the three weeks April 30th to May 21st:

	<i>April 30- May 7</i>	<i>May 7-14</i>	<i>May 14-21</i>
Jobs Listed	7	5	5
Placements	2	4	3
New Registrants	12	14	9
Applicant-Employer Interviews .	11	26	16
Resumes Submitted to Employers	22	16	33

10. *Activities of Special Committees.* One of the most enterprising and aggressive committees is that chairmanned by Edwin A. Falk and known as the Committee on the Federal Courts. It has been chiefly concerned with proposed amendments to the Constitution of the United States designed to protect the Supreme Court from successful executive or legislative attack. Pursuant to the recommendation of this Committee, the Association at the Stated Meeting on December 9, 1947 adopted resolutions approving Constitutional amendments which would provide that:

1. The Supreme Court shall be composed of the Chief Justice of the United States and eight Associate Justices.
2. Each shall retire at the end of the term during which he attains the age of 75 years.
3. None hereafter appointed shall be eligible to the office of President or Vice President.
4. The Court shall have appellate jurisdiction both as to law and fact in all cases arising under the Constitution.

Recommendations One and Two were approved by the House of Delegates of the American Bar Association at the midwinter meeting in February. Recommendation Three was approved, leaving open alternatives of constitutional amendment or statutory enactment. Recommendation Four was referred to the Committee on Jurisprudence and Law Reform with directions to report back to the House at the annual meeting in September. It is reported that this Committee is favorably inclined. A further recommendation of the Committee that no chief justice or associate justice hold any other governmental or public office or position was rejected by our Association. It was adopted in modified form by the House of Delegates.

Another committee which has made progress is the Committee on Public and Bar Relations of which Judge Samuel I. Rosenman is Chairman. In cooperation with the Committee on Taxation an amendment to the Federal Income Tax statute was drafted to secure for lawyers and other professional men and salaried workers not employed by corporations the opportunity

to build up something in the nature of pensions. (See the April issue of *THE RECORD*.) The efforts of the Committee to secure the approval and support of the Treasury and the American Bar Association have not yet been successful but the reports from the latter front are encouraging. Organizations representing various other professions and businesses have assured the Committee of their enthusiastic support. It is expected that a bill will be introduced in Congress this spring and pushed for passage next fall.

A third committee which has done constructive work is the Committee on Military Justice. It presented resolutions to the March meeting of the Association which, after a thorough debate, were adopted. Frederick V. P. Bryan, the Chairman, was ably supported by George A. Spiegelberg and Leonard M. Wallstein, Jr.

One other committee deserves special mention and that is the joint Committee on Election Frauds, of which Ernest Angell is Chairman. There are members from each of the local associations. It has a panel of about 300 younger lawyers who not only assist at the polls on election day, but help the Attorney General in charge of such matters throughout the year. The group is an enthusiastic one and the continuation of the work on an ever-increasing basis of efficiency seems assured. Chairman Angell's chief lieutenant has been Robert Schaffer and the leaders among the younger generation have been Peter H. Kaminer and Daniel G. Tenney, Jr. The Committee has been in consultation with the Police Department, looking towards a considerable revision of their methods in the interest of efficiency and has been instrumental in procuring a substantial change in the form of annual report required by the Board of Elections from lodging house and hotel reports.

C. WORK OF THE COMMITTEES DURING THE YEAR

The Committees may be divided, as they have been in the past, into four groups:

I. Administrative committees which have to do with admis-

sions, entertainment, finance and operation of the library and building;

II. Committees on the judiciary and the administration of justice in general;

III. Committees which cover public service activities, such as the committees on grievances, professional ethics, unlawful practice of the law, legal aid and legal education;

IV. Committees on law reform, state and federal legislation and various special fields of law, such as taxation, aeronautics and the like.

I. ADMINISTRATIVE COMMITTEES

This group of committees operates within the Association itself and is designed to make the Association an efficient going concern. There is not much glory and there is a great deal of work involved in service on one of these committees, but their smooth functioning and coordination are, of course, essential to the well being of the Association.

1. *Executive Committee.* The Executive Committee had a busy year. Every meeting lasted from five o'clock in the afternoon until almost ten, with an intermission for cocktails and dinner. Although a good deal of time was spent ironing out conflicts between committees which had overlapping jurisdiction, there will undoubtedly be further similar conflicts in the future. None of them is ever very serious but sometimes the feeling on either side runs high.

A subcommittee appointed to consider an overall revision of the By-laws reported against the need or advisability of such action. The only amendments proposed were the creation of the new Committee on Municipal Affairs and an enlargement of the powers of the Committee on Trade Marks and Unfair Competition.

The subcommittee which had been endeavoring to secure an amendment of the insurance law in order to facilitate the establishment of a plan for group life insurance covering the members of the Association, their partners, associates and employees was

disappointed that the Governor vetoed the bill partly as a result of the importunities of the Insurance Department. Another attempt to secure the legislation will be made next year.

The Committee collaborated with the Committee on the Judiciary in the preparation and adoption of resolutions covering the method of procedure in approving or disapproving candidates for judicial office. These resolutions as adopted by both the Committee on the Judiciary and the Executive Committee appear on page 218 of this issue of THE RECORD.

The Executive Committee authorized the appointment by the President of two special committees. One of these has for its purpose the consideration of an amendment of the New York divorce law and the setting up of a commission to investigate the situation and make recommendations to the Legislature. The other is the special committee on the unification of the courts.

Throughout the Committee kept in close touch with the building improvement program and the financing of it. I cannot say that my hope that the Executive Committee would act as a very informal hospitality committee at buffet suppers has been realized. In fact, if the truth be told, the members of the Committee have been none too conscientious in attending Stated Meetings and the suppers which precede them.

2. *Committee on Entertainment.* It should be recorded that the net expenses of the Committee for the year were only about \$1,000. This covers all of the buffets, Association Night, the Bar Activities Forum, the moving picture "Boomerang," the Spring Party, and the Twelfth Night Festival. This should put to rest the worries of some members who have visualized vast expenditures on the entertainment side.

It was a major undertaking to carry Association Night into the third year. But under the leadership and inspiration of Judge Wallace the minstrel show was arranged and given on three successive nights in the Meeting Hall. About a thousand members and their wives attended and were unanimous in their appraisal of the high quality of the entertainment. The youth and pulchri-

tude of the feminine contingent counteracted the longevity and bromidity of some of the jokes. The President received only two letters of condemnation during the entire year.

The announcements devised by the Committee showed its imagination. They were also enlivened by drawings by Harris Steinberg. As usual, Newman Levy, Samuel R. Ballin, Eugene A. Leiman and Sigrid H. Pedersen gave their best throughout. And their best is about as good as anybody's. Mention should also be made of our newly discovered danseuse, June Harbour. Many thanks are due to Alfred C. Bennett who played the piano not only on Association Night but on several other evenings, including the evening of the cast party which continued well past midnight.

The Committee's report suggests a new venture:

"The committee, ever adventurous in exploring new territory, has endeavored through some of its musical members to form and bring to perfection a Bar Association orchestra. A list of some 100 Association members who play one or more musical instruments has been compiled, meetings and rehearsals have been held from time to time, and under the leadership of Emanuel Green and Boris Kostelanetz this work is still going on. While we cannot claim that this project has advanced beyond the experimental stage, we have high hopes that by next fall we may be able to announce a musical evening supplied entirely by our talented members."

3. *Committee on Art.* The Committee put on the third annual exhibition of paintings by lawyers. It was as successful as its predecessors and the opening afternoon was as pleasant an occasion as any held in the Reception Hall. The quality of the work was said by the experts to be higher than heretofore. An interesting by-product is that several members have been inspired to take up painting in hopes of becoming contributors to the exhibition.

The Committee did not go through with the suggested exhibition of paintings owned by members and having to do with legal subjects or the exhibition of photographs by lawyers. On

the other hand, it took the affirmative in securing the gift by James N. Rosenberg of the Adirondack landscape which hangs over the mantle in the Supper Room. The Chairman of the Committee, G. Franklin Ludington, is hoping that other artist lawyers will give samples of their work to hang on the other walls in the Supper Room.

4. *Library Committee.* The total number of bound volumes in the Library is 268,000. Of these, 156,000 have been purchased and 112,000 presented to the Association. During the year almost 5,000 volumes were added, of which more than 1,500 were presented. This does not include the various pamphlets acquired. The expenditures during the year were a little over \$100,000 of which approximately \$9,000 came from special funds. The Chairman reports that the work of recataloging according to the up to date system installed by the Library of Congress is proceeding more rapidly than had been expected under the immediate supervision of Assistant Librarian Forrest S. Drummond.

It seems clear that unless some generous benefactor turns up with a large endowment, gift or some plan for annual giving is devised, the Library cannot go on expanding at its present rate. A plan is under way to apportion different subjects to different libraries in the Metropolitan area.

5. *Committee on Increase of Membership.* Under the efficient Chairmanship of Carlyle E. Maw, the number of new members has held up well. It is probable that last year's record of 373 new members between October 1, 1946 and September 1, 1947 will not be quite equalled but the probabilities are that the figure for this year will be over 300. This, of course, includes Associate and Auxiliary Members. The number of Auxiliary Members is now about 100. There should be more and I am prepared to prophesy that within two years there will be 200. The Association should be grateful to Mr. Maw and all the members of the Committee.

6. *Committee on Admissions.* This Committee always works hard and it was to be expected that under the Chairmanship of A. Donald MacKinnon it would not fail to keep up the standard.

The large number of applications has called for many hours not only in meetings but in the interviewing of applicants by the subcommittees. They have been very helpful in finding good material for the various standing committees and reporting it to the President and Executive Secretary. This sort of work should be continued and, if possible, extended.

7. *Committees on Audit, Investments, Insurance of Association Funds and House Committee.* With the exception of the House Committee, the personnel of these Committees has remained about the same over a good many years. Their work is somewhat specialized and not particularly exciting. But the committees have been very conscientious and painstaking. The new Chairman of the House Committee, Franklin E. Parker, Jr., has put in a lot of hard work in investigating the charges for conference rooms and the management of the stenographic department. There is still more to be done along these lines. I have been honored by appointment as a member of the House Committee for the next year.

Perhaps this is the place to mention that the buffet suppers have shown some diversity and improvement. There is, however, room for more of both. The dinner of about sixty given by the committee chairmen in the Reception Hall was pleasant and attractive in all respects. There were about 300 committee meetings of which 225 were held in the House of the Association. Of the latter, nearly all included cocktails and dinner. I think that the Committee on Admissions is the only one still loyal to a college club for eating purposes.

8. *Committee on Junior Bar Activities.* An innovation by this Committee during the year was the institution of inter-law school moot court trials. First, in November there was the contest between the Columbia and Yale Law Schools at which the bench consisted of Judges Shientag, McNally and Conger. There was an attendance of about 300 which included many law students besides those from Columbia and Yale. Then in April Columbia challenged Harvard. The bench consisted of Judge Augustus N. Hand, Honorable Robert P. Patterson and the writer of this re-

port who disagreed with his two judicial brethren. The actual case which presents the question debated is now before the Court of Appeals and it will be interesting to see how it is decided. The plan is that next fall a series of competitions in a round robin tournament will be organized.

Subcommittees are now working on the program of a series of orientation lectures for third year law students, to be conducted in the House of the Association and the possibilities of bringing the Association to the attention of students in the law schools so that they will not graduate with the idea that the Lawyers Guild is the only existing organization of lawyers. The Committee also reports the cocktail party for Auxiliary Members prior to the special meeting of the Association in April and says: "It is to be regretted that most of the Auxiliary Members left as soon as the refreshments ran out."

The Committee has many ideas on the subject of why younger lawyers do not join the Association but none of them seems to me very convincing. I think the greatest deterrent is the fact that a very large proportion of younger members of the bar are compelled to commute long distances and do a good deal of housework when they get home. If and when there are housing accommodations within the city and either the wages of servants go down or the salaries of lawyers go up, there will be many more Auxiliary Members of the Association and younger lawyers will take a greater part in Association activities.

9. *Committee on Memorials.* The experiment of printing the memorials separately did not result in producing them any more rapidly but it probably has proved economical. The number of members who affirmatively asked for copies is 680. Some of the memorials are excellent but I think the one of the late Mr. Justice McReynolds is outstanding.

10. *Committee on Round Table Conferences.* The new plan as worked out a year ago has brought improvement. The Chairman's report describes the procedure as follows:

"This year each of the Round Table Conferences was preceded with a buffet supper to which all members of the

Association were invited. The conference itself was divided into two parts. During the first part the guest of honor made an opening statement on a subject which he had selected in advance. Following his remarks we had a general discussion of the assigned topic. The last part of the conference was then taken up with an open discussion upon any topic which a member of the Association cared to propose."

There were five conferences, the guests of honor being, in order, Presiding Justice Peck, Judge Medina, Judge Fuld, Surrogate McGarey and Judge Clark of the U. S. Circuit Court of Appeals. The subjects concerned chiefly matters of procedure in the State and Federal courts. A suggestion for next year would be to reduce the number of conferences to four and to plan the speakers in advance so that they would form part of a unified discussion of some given subject.

II. COMMITTEES ON THE JUDICIARY AND THE ADMINISTRATION OF JUSTICE IN GENERAL

This is the field in which, both logically and traditionally, the Association should be able to record substantial achievements. It is here that lawyers have the training and qualifications whereby they can be useful and this means that they have an obligation to the community to maintain a high degree of public usefulness.

1. *Committee on the Judiciary.* This Committee has continued to listen with both ears and to be ready to talk when advisable and to fight if necessary. The necessity for the creation of a judgeship to take the place of the one terminated by statute on the death of Judge Woolsey and one or two more in order to handle the press of business has been admitted by everyone. But, to the discredit of both the Democratic administration and the Republican Congress, the Committee, despite heroic efforts, have been unable to break the impasse whereby the Congress will not add judgeships by legislation unless the administration will agree to appoint some indefinite number of Republicans to the new

positions. Meanwhile, cases are undisposed of, many litigants are literally denied justice, and judges are worked to death.

In connection with the vacancy created by the death of Judge Bright, the Committee had high hopes that the appointment would go to a well qualified lawyer whose name had been submitted by the Attorney General for consideration. Unfortunately, these hopes were not realized and the President appointed another lawyer whom the Committee had failed to approve. It is now planned that the Committee will join with the Judiciary Committee of the American Bar Association and the New York State Bar Association in opposing the appointment before the Senate Judiciary Committee.

The problem of the vacancy on the Surrogate's Court which will be created by the retirement of Surrogate Delehanty at the end of this calendar year is a serious one. The Committee is doing everything in its power to assure the nomination of good candidates by all parties. A special emergency committee made up of former members of the Judiciary Committee, representatives of the Executive Committee, members of the Junior Bar Committee, and the Executive Secretary of the Association is conducting an educational campaign to impress upon the public the importance of this office and the need for a competent and trustworthy lawyer to occupy it. There is also the vacancy which will be created by the expiration of the term of Justice Kenneth O'Brien and that created by the death of Justice McLaughlin, whose successor by appointment of the Governor is Eugene L. Briesach. This appointment was made without consulting the Committee on the Judiciary.

As has been mentioned in connection with the Executive Committee, it and the Judiciary Committee concurred in the adoption of resolutions respecting the description and endorsement of candidates. The purpose was a better understanding by the public of future action by the Committee and the Association and a synchronization with the procedure and terminology used by the County Lawyers Association.

2. *Committee on Courts of Superior Jurisdiction.* The improvement of the administration of justice is a slow process but sustained effort on the part of bar association committees does sometimes bring results. This Committee achieved during the past year two notable reforms in the practice of the Supreme Court. One of these was the establishment of a separate calendar for tort cases. The second reform was the institution of pretrial procedure similar to that used in the Federal Courts under Rule 16. Neither of these reforms would have been accomplished without the cooperation of Presiding Justice David W. Peck.

The Committee was also active in trying to get more judges for the Federal District Court for the Southern District, and the chairman on several occasions wrestled manfully with politicians of all shapes and sizes. To date no winner has been announced, but there can be no doubt to whom the victory will go.

3. *Committee on the Surrogates' Courts.* This Committee held ten meetings during the year and spent a great deal of time in examining some sixty-eight proposed bills which came within its jurisdiction because they affected the Surrogates' Courts or the administration of estates.

In addition to this work, the Committee gave a great deal of attention to the suggestion of Surrogate Delehanty that it consider a general revision of Section 124 of the decedent's estate law, which requires the proration of Federal and New York estate taxes among the persons interested in an estate unless the testator has otherwise expressly directed in his will. A bill was prepared but was opposed by the insurance companies and others and defeated in the Legislature. It is probable that next year the Committee will continue its work on this subject and perhaps succeed in effecting a desirable reform in the law. The Committee was sympathetic to the changes made in the system of computing trustees' commissions and notes with satisfaction the enactment of the new Section 285(a).

4. *Committee on Criminal Courts, Law and Procedure.* The procedure of this Committee during the year was the same as in

the past. It examined legislation having to do with the Criminal Courts and with the procedure therein. It reported to the Legislature with respect to the proposed legislation using the form of printed bulletins similar to that used by the Committee on State Legislation. The Committee also organized and gave the customary dinner which is attended by a number of the judges. This is always a pleasant occasion, enjoyed alike by the lawyers and the judges.

5. *Committee on the City Court.* This Committee was successful in getting the City Court to institute a system of pre-trial calendars which has been found very helpful to the Bar. It is working on a handbook for jurors which will instruct them in the proper performance of their duties, and give them an idea of just what they are expected to do and not to do.

6. *Committee on the Domestic Relations Court.* This Committee was unusually energetic in its attempt to educate its new members in the procedures of the Court and in the requirements of the proper administration of justice in the sort of cases with which it is confronted. The members of the Committee visited the Court and listened to a talk by the chief psychiatrist. They also had the benefit of a talk by the chief probation officer of the Children's Court. The Committee has been greatly interested in the problem of just what are the necessary qualifications for judgeships in this Court and just how judges having those qualifications are to be secured. Since something different from, and in addition to, the requirements of the ordinary lawyer are necessary if justice is to be properly done in the Court of Domestic Relations, the ordinary tests for determining fitness do not apply. The Committee will try to put the needs of the situation on paper for distribution as widely as possible.

During the year there were simultaneously three vacancies on the bench and the Mayor asked for a report on the qualifications of three lawyers whom he was considering for appointment. The Committee reported favorably on one of these lawyers, but found the other two not qualified. The Mayor appointed all three.

7. *Committee on the Municipal Court.* This Committee was deprived of an opportunity to assist in the administration of justice by the refusal of the Mayor to submit nominees under consideration by him. As always, the Committee kept a watchful eye upon the operations of the Court and was prepared to make recommendations for improvement in its procedure.

III. PUBLIC SERVICE COMMITTEES

This group includes the Committee on Grievances, Committee on Professional Ethics and several others. The work of these Committees is dedicated to upholding the standards of the profession of law and that, of course, directly affects the public welfare.

1. *Committee on Grievances.* During the year 1,215 complaints have been called to the Committee's attention. The number of new complaints is slightly less than that in the preceding year. There was a carry-over of 154 complaints. Of the 1,369 complaints which were before the Committee during the past twelve months, 43 were dismissed or ordered filed, 17 were recommended for prosecution after trials before the Committee and 176 are now in the course of litigation, further investigation or trial before the Committee. The remaining 1,133 were dismissed or filed when the matters complained of were subsequently remedied or upon investigation were found to be without merit or unsupported by sufficient proof.

During the past year 48 meetings of the Committee have been held and 60 complaints involving 49 attorneys have been fully tried before the Committee in hearings which in many cases have been protracted. As a result of this work, the Committee has recommended, through the Executive Committee, disciplinary proceedings against ten attorneys on nineteen different charges.

During the year an examination of the statutes and of the books of the Association revealed that the Association was not receiving from the County the full amount to which it was properly entitled as a result of conducting the various proceedings necessary in carrying on its duties. The Chairman of the Committee and the

President of the Association conferred with Presiding Justice Peck and he enthusiastically supported the suggestion that a change be made in this matter so that the County would bear the share of the burden contemplated by the statutes. This will eventually result in reducing the expenditures of the Association by some ten or fifteen thousand dollars, but it will still be necessary for it to pay out of its own pocket some \$30,000 or more.

2. *Committee on Professional Ethics.* During the year the Committee held a meeting in each month except December and formally considered and replied by letter to about twenty inquiries which had been placed before the full Committee. In preparation for each meeting subcommittees conferred and met to prepare reports for submission to the full Committee. In addition to all this, the Chairman has answered about a dozen inquiries each week by telephone or letter since these involved routine matters or questions already covered by previous rules. The formal opinions issued during the year deal with such questions as the propriety of professional announcements, conflicts of interest and the participation of attorneys in television programs dealing with legal problems. This goes to show that it is right up to date. The Committee is proud of the fact that it completed the compilation of a volume containing all of the opinions from 1939 to date. This was done with the aid of the individual members of the Executive Committee who secured office assistance in mimeographing.

At the request of Presiding Justice Peck the Committee and the corresponding committee of the New York County Lawyers Association have drafted a proposed court rule regarding professional announcements by attorneys in the First Department. It is believed that it will be of great advantage to have one authoritative ruling on this perplexing subject. The Chairman is to be congratulated upon his record of efficiency and accomplishment during the last three years.

3. *Committee on Unlawful Practice.* The outstanding event in this field during the year was the decision of the *Bercu*

case. This decision and the excellent opinion of Presiding Justice Peck will have a salutary effect throughout the country upon accountants who specialize in tax work and others. This will be true even if the unexpected should happen and the Court of Appeals should reverse the Appellate Division. The credit for the aggressive action on behalf of the Bar in this case goes to Edwin M. Otterbourg, Chairman of the Committee of the County Lawyers Association, but our Committee collaborated enthusiastically. There have been no other noteworthy activities during the year.

4. *Committee on Legal Aid.* The Committee on Legal Aid adequately performed its duties of keeping in touch with the work of The Legal Aid Society. From time to time suggestions have been interchanged, looking to the improvement of the work in New York City. In addition, the Committee, through its Chairman, started a campaign to raise a fund sufficient to finance the extension of activities of the Criminal Courts branch of The Legal Aid Society to the Federal Courts. The sum required is \$45,000. Mr. John D. Rockefeller, Jr. has pledged one third of this amount provided that the balance can be raised from contributions from other sources. The Chairman assures me that he has made a good start and hopes to finish successfully within the year.

5. *Committees on Legal Education and Post-admission Legal Education.* Under the auspices of the Committee on Legal Education the National Law Students' Conference on Legal Education conducted a symposium on legal education in July, 1947. Some forty-five law schools were represented. The symposium was directed by law review men who acted as hosts for the 300 or more who attended. The Committee considered but decided against undertaking a study of changes that might be desirable in law school curricula. However, a subcommittee still has the question under review. It expressed approval of the present requirements of two years of college education and the content thereof, but undertook through a subcommittee to consider what changes, if any, in the requirements should be recommended for the future.

The Committee on Post-admission Legal Education has carried on with great success. The lectures and the section meetings have been well attended and greatly appreciated by the audiences. The Section on the Drafting of Legal Instruments under the Chairmanship of Lloyd K. Garrison which was initiated last year has drawn increasing numbers and may be regarded as a permanent institution. The other chairmen who have given generously of their time and thought are Stuart N. Scott, Corporations; Milton Handler, Labor Law; Werner Ilsen, State and Federal Procedure; Weston Vernon, Jr., Taxation; William C. Chanler, Trials and Appeals; Logan Fulrath, Trusts and Estates. The hard-working and efficient overlord is Cloyd Laporte.

The lectures given during the year were as follows: November, "Cross-examination, a Judge's Viewpoint," Judge Bernard L. Shientag; December, "The Marshall Plan," Adolph A. Berle, Jr.; January, "Standards for Congressional Investigations," Judge Ferdinand Pecora and Judge Charles E. Wyzanski, Jr.; February, "Recent Developments in Constitutional and Administrative Law," Whitney North Seymour; March, "Conflicts in Conflicts," Judge Herbert F. Goodrich and Elliott Evans Cheatham. The Seventh Annual Cardozo Lecture was delivered by Professor Arthur L. Goodhart on May 25th. His subject was "English Contributions to Legal Philosophy."

IV. COMMITTEES ON LAW REFORM, STATE AND FEDERAL LEGISLATION AND SPECIAL FIELDS OF LAW

These are the committees whose concern is the initiation or examination of legislation and the making of recommendations to the legislature and others for or against certain bills. This is a field in which, for the most part, lawyers are qualified to express opinions which should have influence with legislators, government officials and the public, provided only that the considerations pro and con are not purely political or economic.

1. *Committee on Law Reform.* Since 1945 the Association has been attempting to get introduced in the legislature a bill prepared by the Law Reform Committee which would liberalize the

divorce laws. This year, due to the persistence and energy of the Chairman, the bill (Assembly Int. 2402) was introduced by Assemblyman William T. Andrews, a member of the Association. The bill, of course, was not expected to be reported out of Committee, but its introduction served to call to the attention of all groups interested in the long needed reform of our divorce laws that this Association was making some progress. Copies of the bill were sent to all local bar associations throughout the State, and the response from them has been most encouraging—so encouraging, in fact, that the Executive Committee authorized the creation of a Special Committee on the Improvement of the Divorce Laws, which will now carry on the good work which the Committee on Law Reform has started.

The other legislative success of the Committee was that it managed to get enacted into law a bill to amend the banking law, the debtor and creditor law, the decedent estate law, the insurance law, the personal property law, the public housing law, the real property law, and the Civil Practice Act, in relation to notes in connection with mortgages and investments. The bill as approved by the Governor became Chapter 744 of the Laws of 1948, and a tax saving will now be possible through the use of notes, rather than bonds, underlying mortgages.

The great disappointment of the year was the failure of the legislature to adopt the Association's recommendation to introduce into New York State practice the Federal rules governing depositions and discovery. Apparently every lawyer in the State, except those in the legislature, is behind this measure. It is to be hoped that our members who are in the legislature next year will show greater interest in this reform.

Two other bills were introduced. One of them was the concurrent resolution proposing an amendment to Article Six of the Constitution which would prevent sitting judges from becoming candidates for nonjudicial office. The resolution passed the Senate but was killed in the Assembly Judiciary Committee. Also introduced was an act to amend the workmen's compensation

law. The bill was intended to give a remedy at common law to an employee injured by the wilful act of his employer or of a co-employee. Opposition in committee developed, and since the grounds of the objection are considered reasonable, an effort will be made to obviate them by redrafting the bill.

The Committee on Law Reform has ready two bills for introduction next year—one of them the bill to modify the present rule against perpetuities and the other legislation that would extend to churches and other charitable institutions the benefits of the nominee system of holding securities. The Committee has under study legislation dealing with the recognition of foreign divorce decrees; the attachment of interests of life beneficiaries of trusts; taxable costs and disbursements; proof of foreign law; the statute of limitations in certain actions involving aliens; and contributions among joint tortfeasors.

2. *Committee on State Legislation.* The Committee on State Legislation had its usual quota of conflicts with other committees. These were resolved without too much trouble, largely because the Chairman of the Committee, although not departing from his predecessor's firm stand, was able through tact and hard work to satisfy or at least pacify the specialist committees. The Committee wrote formal reports on 152 bills and special reports on 15 additional bills. Only nine bills out of one hundred which the Committee disapproved became law. One of the necessary projects for next year in which the Committee must take a lead and which the Chairman of the Committee has already considered is the development of some means of distributing bills which the Committee does not consider within its general jurisdiction to the specialist committees who presumably would be interested in them. The problem is largely one of manpower, but it is hoped some progress can be made toward its solution.

3. *Committee on Federal Legislation.* The tradition of this Committee is that it works diligently, efficiently, and well. That tradition was maintained this year. Major attention was given to H.R. 2055, a bill which would codify the Judiciary Code. The

final report of the Committee has not yet been released. The Committee also has under consideration the condemnation rules of the Advisory Committee on Rules for Civil Procedure.

Two inroads were made into the Committee's jurisdiction by a revision of the By-laws approved at the Annual Meeting. One of these, which the Committee unanimously accepted, removed from the Committee's consideration legislation dealing with bankruptcy and corporate reorganization. The other legislation withdrawn from the Committee's jurisdiction is that relating to trade regulation, and here reasonable men can reasonably differ as to the wisdom of the amendment.

The same problem that is before the Committee on State Legislation is before the Committee on Federal Legislation, and that is how to screen the vast number of bills introduced in the Congress so that the Committee will see those that are important for its work and so that the other committees having an interest in Federal Legislation will have an opportunity to examine bills dealing with their special fields.

4. *Committee on Labor and Social Security Legislation.* Last year this Committee kept the Association up to date and excited about a number of labor bills before the Congress. This year the Committee presented only one report for Association action, and that dealt with the question of whether the State of New York should change its Labor Relations Law so as to conform to the National Labor Relations Law, as amended by the provisions of the Taft-Hartley Law. As usual, the Committee was divided, and the Association at its Annual Meeting, after hearing some argument, voted to recommit the report to the Committee.

In this number of THE RECORD is published an able report by a subcommittee of the Committee on questions of social security legislation. Next fall these matters will come before a Stated Meeting.

Although the chairman of the Committee on Labor Law has during his tenure dealt with extremely controversial matters, it is a tribute to his sense of fair play and good will that his Com-

mittee is unanimously of the opinion that he was the best chairman the Committee could possibly have had.

5. *Committee on Administrative Law.* The Committee on Administrative Law set out to get three bills through the legislature which would correct what the Committee believed were flaws in Article 78 of the Civil Practice Act. The reasons for the legislation were fully presented to the Association at its Stated Meeting on January 20, and although the legislature agreed on all three counts with the Committee, for some reason the Governor was not so easily persuaded. It is particularly unfortunate that he saw fit to veto the proposal to permit changing the designation of the body or officer proceeded against from respondent to defendant. This the Committee urged as a matter of merely practical convenience.

The Committee also received Association approval of its view that this State does not need a State Administrative Procedure Act, and particularly does not need the model State Administrative Procedure Act promulgated in 1946 by the National Conference of Commissioners on Uniform State Laws. In my last report I said that "every one" seems to admit that such an act is badly needed. This statement apparently does not meet with the approval of the Committee or the Association, and when I consider the expertness of the members of the Committee and its Chairman, I suppose I have to admit that my statement was somewhat less accurate than the Gallup Poll.

6. *Committee on Patents.* The Committee on Patents continued its study of new legislation and observed the administration of the patent law in the courts. The Committee has not yet released the results of its study of the report of the Patent Survey Committee of the Department of Commerce.

It is probably appropriate here to say that the Association does not have among its membership anywhere near as many members of the patent Bar as it should have. One reason for this, of course, is that patent lawyers work through their own associations. But cooperation between the patent Bar and this Association's Com-

mittee has indicated that there are benefits to be derived on both sides from membership in the Association.

7. *Committee on Copyright.* The Committee continued its study of bills affecting copyright and directed particular attention to the possibility that the Committee might be instrumental in securing the adoption of a new United States Copyright Law. The Committee has worked in close cooperation with UNESCO toward the eventual adoption of an international copyright law succeeding the Berne Convention. The chairman and several other members of the Committee attended the UNESCO meeting held in Washington during the first week in May.

8. *Committee on Trade-Marks and Unfair Competition.* This is the last report to record the "old" name of this Committee. At the Annual Meeting the Association voted that the Committee should be called the Committee on Trade Regulation and Trade-Marks, and as a matter of fact, this action only ratifies what the Committee has been doing during the year, because its main concern has been with problems relating to trade regulations. In this connection the Committee sponsored an exceptionally well attended lecture on recent developments in anti-trust law delivered by Professor Milton Handler.

9. *Committee on Taxation.* In December the Committee published a notable report on Proposed Changes in the Federal Income, Estate and Gift Tax Laws and Practice, in which the Committee recommended twenty-three tax reforms in addition to those recommended in the Committee's 1946 report. Having issued the report, which was distributed widely, the Committee went on to appear before the House Committee on Ways and Means and to confer with the Staff of the Joint Congressional Committee on Internal Revenue. The Committee has reason to believe that its more important recommendations will be included in the next Federal Tax Revision Bill. The chairman is to be commended not only on the excellence of his Committee's report but on the generous amount of time he has devoted to the hard work of getting the proposals translated into legislation.

The Committee also reviewed fifty bills affecting taxation which were introduced in the 1948 session of the legislature. Of these the Committee approved only two. The Committee continued to cooperate with the Special Committee on Public and Bar Relations and drafted bills which would eliminate the tax discrimination against the professions.

10. *Committee on Uniform State Laws.* After a careful review of all the uniform state laws, the Committee came to the conclusion that there were none not now in force in New York which could be sponsored by Committee. The Committee has been saving its strength for a complete study of the new Commercial Code which is being drafted by the American Law Institute. Although every one concerned tried hard to get from the Institute drafts of the Code, no drafts were forthcoming until the Committee's tenure of office had expired. There are now some twenty pounds of literature in the hands of the Committee's successors, and the new chairman promises at least that much work for his Committee during the cooler days of the summer.

11. *Committee on International Law.* Two stated meetings and one special meeting of the Association were concerned with the reports of this Committee on the International Draft Covenant on Human Rights and the International Draft Declaration on Human Rights. The Committee submitted one report and two supplementary reports which were models of draftsmanship. However, the reports did not convince the Association that it should follow the Committee's lead, and at the Annual Meeting in May the reports were recommitted to the Committee for further study.

Although this action may have been a disappointment to some members of the Committee, it is not strange that on a report dealing with so important a subject the Association should want to proceed slowly. It is to be anticipated that final action will be taken early next fall. The Association is under debt to the Chairman for bringing before it matters of such immediate and great interest.

12. *Committee on Foreign Law.* The Committee on Foreign Law continued its consideration of the requirements for pleading foreign law and also the statute of limitation in certain actions involving aliens. The Committee also sponsored a highly successful symposium on Foreign Funds. The speakers at the symposium were all experts in a field which is of growing practical importance to all lawyers. Late this summer the Committee will be host to the gathering of teachers of international and comparative law which will meet at the House of the Association.

13. *Committee on Admiralty.* The Committee continued its study of the revision of the federal shipping laws but has not yet issued a final report. In the field of admiralty, as in patents, the Association would be greatly strengthened by having a larger representation of the admiralty Bar among its membership.

14. *Committee on Aeronautics.* The Committee in an effort to be helpful to the aviation industry and to lawyers interested in aviation law invited James M. Landis, former chairman of the Civil Aeronautics Board, to address the Association and representatives of the industry. Mr. Landis made a good speech; there was a very large representation of important leaders in the aviation industry; and the whole affair is one that reflects credit on the Committee's Chairman and his colleagues.

15. *Committee on the Bill of Rights.* The Committee on the Bill of Rights submitted a report which was adopted by the Association dealing with fair educational practices legislation. The legislation was subsequently enacted with practically unanimous approval. The Committee also reviewed a number of bills pending in the legislature. It is hoped that next year the Committee will consider the suggestions made by Judge Wyzanski in his excellent discussion of Standards for Congressional Investigations published in THE RECORD for March, 1948.

16. *Committee on Arbitration.* Last year I reported on the success of a demonstration of commercial arbitration which this Committee staged in the Meeting Hall. Since that date the performance has been put on at Penn State College five times, at the University of Wisconsin, at Southern Methodist University, at

the National Credit Institute, at Yale University, and it will be presented at Harvard University and Cornell University. The casts, of course, have not been recruited from our own membership, as it was in the original production.

The Committee now has a second such demonstration in its repertoire which dramatizes a management-labor arbitration, and this one, too, is scheduled for presentation in a number of other places.

The Committee has also recommended the repeal of statutes permitting voluntary arbitration of rent rates in leases. The Committee will consider this subject again after it has had a report from the Committee on Real Property Law.

In THE RECORD for April, 1948, the Committee published a study of lawyer participation in arbitration proceedings, which is but another of its efforts to let the bar see that arbitration is not a device for limiting the usefulness of lawyers—rather the contrary.

17. *Committee on Bankruptcy and Corporate Reorganizations.* The Committee has been active in drafting a simplified and more workable Section 77 of the Bankruptcy Act, which the Committee hopes will permit railroad reorganizations to be accomplished in somewhat less time than now seems possible. Chapter X and XI of the Bankruptcy Act are also under study by the Committee, and the results of these studies will soon be made available for such action as the Association may direct. The Committee also approved the additional language proposed by the National Bankruptcy Conference in H.R. 2412 and S. 826, bills which correct errors made when Section 60 of the Bankruptcy Act was amended in 1938.

18. *Committee on Medical Jurisprudence.* The Committee has come to agreement on the scope and nature of its work, and as a result will continue with its activities dealing with problems of the legal control of alcoholism and the care of the mentally ill. A subcommittee headed by Edmund T. Delaney is working in close cooperation with The New York Academy of Medicine and will soon produce a model statute on the control of alcoholism.

The Committee sponsored a forum which drew an audience of three hundred at which experts discussed legal proceedings protecting the interests of the mentally incompetent.

19. *Committee on Real Property Law.* The Committee continued to be very active. During the first part of the year its attention was largely directed to rent control, housing, and related matters. The Committee approved a report in favor of the Taft-Ellender-Wagner Bill and sponsored a joint discussion on residential rent control.

After the legislature was in session the Committee met ten times to consider about five hundred bills. Over sixty-five reports were prepared, and twenty-five of these reports were published in the bulletin of the Committee on State Legislation as the joint conclusions of the two committees.

It should be noted here that a member of the Committee, Lewis M. Isaacs, Jr., rendered great service as vice chairman of the Mayor's Advisory Committee, which organized and administered volunteer panels of lawyers. They sat in the municipal court houses throughout the city and gave free advice to tenants and landlords on the emergency residential rent laws.

Next fall the Committee expects to call to the Association's attention the loose practice of the State Legislature in adopting important bills dealing with vital matters affecting real estate which have been introduced only in the closing hours of the legislative session.

20. *Committee on Insurance Law.* The Committee worked through six subcommittees dealing with life insurance, fire insurance, casualty insurance, state regulation of insurance, lectures on insurance, and pensions. Through the efforts of the subcommittee on lectures two discussions were presented. One of these was on the subject of disposition of insurance claims, and the other on the operations of the New York State Insurance Department and the effect of recent legislation. The Committee also considered requirements of proofs of loss and the provisions of Section 168 of the Insurance Law establishing a statutory form of fire insurance policy.

Committee Report

COMMITTEE ON LABOR AND SOCIAL SECURITY LEGISLATION

REPORT OF SUBCOMMITTEE ON WAGE AND HOUR AND SOCIAL SECURITY LEGISLATION*

Because of considerably increased Congressional activity of recent date designed at amending the provisions of the Fair Labor Standards Act, the Subcommittee undertook a study of the question, using as its focal point, a bill recently introduced into the United States Senate by the Hon. Joseph H. Ball (S. 2386). The reason for this approach was that the Ball Bill appears to embody suggested changes relating to most, if not all, of those portions of the Act at which criticism has been aimed in the past. Herewith are presented the more important proposals of the Ball Bill with appropriate comments and recommendations of the Subcommittee.

(1) *The term "regular rate of pay" is specifically defined for the first time.* (Section 3(n)) Clearly, this subject commanded the greatest attention of the drafters of the Bill. The definition contained in the Bill because of the very nature of the subject is necessarily rather involved and complex. The subject is broken down into two main categories, (a) employees employed under collective bargaining contracts, and (b) other employees.† Those subjects, in turn, are each broken down into three other categories, namely, (1) payments that must be included as part of the regular rate, (2) payments that must be excluded from the regular rate of pay and that are credited to overtime compensation due under the law, and (3) payments which are excluded from the

* EDITOR'S NOTE: This subcommittee report will be considered by the entire Committee and presented for action to the Association next fall.

† The Bill appears rather poorly drafted in this respect. Although there is special treatment of employees employed under Union Contracts, the other provisions of the Bill which ostensibly apply to employees other than employees covered by Union Agreements make reference in various instances to Union Agreement provisions (See Section 3(n)(1)(B)(1) and (2)).

regular rate of pay, but are not credited to overtime compensation due under the law.

With respect to category (a) above, (employees covered by Union Contracts), the Bill provides that in addition to the basic wage payments, the following shall be included in "regular rate of pay," (a) production bonuses and incentive payments distributed monthly or more often where the amount is determined by the production or efficiency of the employee and without reference to profits, and (b) other payments such as attendance bonuses, shift differentials, premiums for hazardous work and other bonuses not specifically excluded, which are paid every three months or more often by contract or practice, where such payments are not specifically excluded by designation as "overtime" payments in the Union Contract.

Payments excluded from "regular rate" and creditable against overtime compensation required by the Act (where employees are covered by Union Contracts) include: (a) overtime paid for work performed "in excess" of the normal work day or week by practice or contract, (b) overtime for work performed "outside of the normal work day or work week" including premium payments for Saturday, Sunday and holiday work, (c) payments designated as "overtime" or otherwise, made creditable to overtime by the provisions of the Union Contract.

Excluded from regular rate, but not offsettable against overtime are (a) payments for vacation work, (b) pay for vacations, holidays and other time not worked, (c) employer contributions and employee benefits paid under a retirement, annuity, pension, medical or death-benefit plan, (d) contributions made by the employer and payments made to the employee under a profit-sharing plan approved by the Administrator or under which the employer is required to distribute or set aside for employees, a predetermined percentage of his profits, (e) bonuses paid less frequently than quarterly where the amount is not measured exclusively by the production or efficiency of the employee . . . provided such payments "are not designated as 'overtime' payments, nor other-

wise made creditable to overtime by the provisions" of the Union Agreement.

With respect to category (b) above (employees other than those covered by collective bargaining agreements), the Bill provides that, in addition to basic pay, the following payments must be included in regular rate, (1) production bonuses and other incentive payments determined by production or efficiency, and not related to profits, (2) attendance bonuses, (3) shift differentials, (4) premiums for hazardous, arduous, or dirty work, (5) other bonuses not specifically excluded which are paid every three months or more often under any contract or practice.

Excluded from straight time pay and creditable against overtime compensation due are (1) overtime pay for work performed "in excess of" the normal work day or work week by established practice or Union Contract and (2) overtime paid for work "outside of the normal work day or work week" by established practice or Union Contract, including Saturday, Sunday and holiday premiums.

Excluded from regular rate but not creditable against overtime are (1) premium payments for work performed during vacations (2) pay for vacations, holidays and other time not worked, (3) employer contributions and employee benefits paid under retirement, annuity, pension, medical or death-benefit plans, (4) contributions made by the employer and payments made to the employee under profit-sharing plans, approved by the Administrator or under which the employer is required to distribute a predetermined percentage of his profits to his employees, and (5) bonuses paid less frequently than every three months where the amount is not measured exclusively by production or efficiency.

In the same section of the Bill are two other very significant provisions. An apparent attempt is made to give statutory approval to the *Belo* Contract. The language used in this respect is not very clear however, and it seems to restrict the application of the *Belo* Contract. The guaranteed salary arrangement is ap-

proved, "if, but only if, it is not substantially less than . . . average straight time hourly earnings, after due allowance for overtime, over a representative period of time." In addition, the Bill specifically sanctions the payment of overtime either on the basis of the average hourly rate determined by dividing total earnings by the number of hours worked in any work week, or on the basis of the rate or rates applicable to the work performed during overtime hours where an employee does two or more kinds of work for which different rates of pay are established during the same week.

Recommendation: The definition of "regular rate" contained in the Bill appears on the whole to be an adequate job. While it may not be all that might be desired, any such appraisal must be tempered by an appreciation of the extremely difficult job that confronted its drafters. A most significant part of the definition, it will be observed, is the apparently wide latitude given in those situations where employees are covered by bona fide collective bargaining contracts. As to such employees, many of the payments which otherwise might be regarded as part of the "regular rate" may apparently be excluded "by designation as 'overtime' payments in the provisions of (the) agreement or by an express provision thereof." (Section 3(n)(3)(A)(3)) Separate provision is made for production and incentive bonuses. Where an employee is not covered by a bona fide union contract, such bonuses are included in "regular rate" regardless how frequently paid, but where there is a union contract only production and incentive payments distributed monthly or more often are included as part of "regular rate." Overtime on overtime payments seem to be quite effectively outlawed as to all employees. Also, the Bill's proposal to give legislative sanction to the computation of overtime on the basis of the rate or rates prevailing during overtime hours, where an employee does two or more kinds of work for which he is paid different rates of pay, is, of course, most desirable.

Criticism is in order of that part of the definition which seems to deal with the *Belo* Contract. In view of the fact that *Belo* Con-

tracts have twice been sustained as valid by the United States Supreme Court, (*Walling v. A. H. Belo Corp.*, *Walling v. Halliburton Oil Well Cementing Corp.*), it is difficult to understand why the Bill undertakes to restrict the application of the contract. In any event, that provision of the Ball Bill is not very clear and requires further clarification. (Section 3(n)(2)).

(2) *The Bill increases the minimum hourly wage rate from 40 cents an hour to 60 cents an hour and provides for the issuance of wage orders for particular industries by the Administrator which may prescribe minimum hourly wage rates ranging from 50 cents per hour to 70 cents per hour. (Section 6)* The machinery for establishing such wage orders through industry committees appointed by the Administrator is largely borrowed from that used in the Act as originally passed. However, there are several significant differences. The law now provides that the Administrator "as soon as practicable" is to appoint industry committees for each industry. The Ball Bill says that such committees shall be appointed "forthwith." Also, the Bill adds two additional factors for consideration by industry committees in establishing minimum wage rates for particular industries, namely,

"the minimum amount necessary to maintain, after making due allowance for the lack of dependents of single workers and for variations in the number of wage earners and dependents in a family, the health, efficiency, and general well-being of workers, giving due consideration to regional economic factors;

"the value of the service or class of service rendered."

In addition, the Bill seems to make somewhat more possible the establishment of classifications within an industry on a regional basis. The original law provided simply that in determining classifications within an industry, no minimum wage rate was to be fixed solely on a regional basis, but the industry committee and the Administrator were to consider various relevant factors enumerated in the law (Section 8(a)(c)). The Ball Bill, likewise,

provides that no minimum wage rate is to be fixed solely on a regional basis, but then the bill adds:

"unless the industry committee finds that as a result of regional economic differences the establishment of a uniform minimum wage rate would create substantial competitive inequalities among different branches of an industry."

Finally, a most significant change sought to be effected by the Bill is that it specifically provides that wage orders issued by the Administrator may regulate or prohibit industrial home work. There was in the past considerable criticism of the Administrator's action in outlawing home work under several wage orders. The Administrator claimed that such prohibition of home work was necessary to effectuate the minimum wage order itself. Critics of this procedure argued that the prohibition of home work was, in itself, so significant a social change that unless provision therefor was specifically made in the Act by Congress, it should not be implied as the Administrator had done. The United States Supreme Court, after considerable litigation, sustained the right of the Administrator to prohibit home work in any wage order where he found that it was necessary to effectuate the order itself. (*Gemsco Inc. v. Walling*, 324 U.S. 244) Although the Supreme Court sustained the right of the Administrator to outlaw home work through the wage order machinery, the Administrator has used this authority quite sparingly, apparently because he recognized that it was a radical step. Thus, up to this point, home work has been outlawed in only a handful of industries. With the express statutory authority for such prohibition in the Ball Bill, it is likely that the restriction of home work would be far more wide-spread. (Section 5 and 8).

Recommendation: Because the question of the amount of the minimum wage rate itself has in the past been regarded by the Association as an economic question and hence beyond the pale of the Committee's jurisdiction, the Subcommittee has not under-

taken to consider that question at all. Nor did the Subcommittee deem it advisable to consider the question of home work. However, attention was directed to that part of the Bill which makes provision for increasing or lowering the minimum wage from 50 to 70 cents an hour for particular industries through industry committees, a procedure substantially similar to that used under the present Act. In the opinion of the Subcommittee, the use of the industry committee procedure is undesirable for several reasons. Firstly, past experience with such procedure has proven quite conclusively that industry committees appointed by the Administrator almost inevitably become merely rubber stamps for the Administrator. Secondly, past experience has indicated that this procedure results in the issuance of a labyrinth of individual administrative orders for a great many industries. Employers were confronted with the burdensome task of plowing through this maze of orders, each with its own complicated definition of the industry covered, to determine which of the orders applied to their operations. It frequently happened that particular employees of particular employers were covered by several different wage orders in the same week and that different employees of the same employer were covered by different wage orders. Finally, industry wage rates were rarely established scientifically or according to the standards established by Congress. (See H. W. Metz, *Labor Policy of the Federal Government*, Pages 177-184).

(3) *It proposes to restrict the coverage of the Act by eliminating from the coverage of the Wage and Hour Provisions of the Act, employees where "fewer than five and less than 20 per centum of the employees in the establishment in which he is employed" are covered by the Act.* More important, the Bill seeks to whittle down the coverage of employees "necessary" to the production of goods for commerce (Section 3(j)).

Recommendations: The Subcommittee was divided on the question whether the Act's coverage should be restricted or be made co-extensive with that of the N.L.R.A. However, there was unanimous agreement that the Ball Bill fails adequately to at-

tack the fundamental defect in the present basis of coverage of the F.L.S.A. The Act, as presently written, covers "employees" who are engaged in interstate commerce or production for commerce. In other words, the Act uses an employee rather than an employer test. It is now settled, also, that the Act applies on a work week basis. The United States Supreme Court has held that, although an employer is engaged in shipping goods in interstate commerce only to the extent of one-half of one per cent. of his production, his employees may be covered by the provisions of the Act. (*Mabee v. White Plains Publishing Co.*, 66 Sup. Ct. 21).

The Wage and Hour Division in an interpretative bulletin on the coverage of the Act, issued in July 1947 (Title 29, Chapter V, Code of Federal Regulations, Part 776) indicated that under the present basis of coverage,

"It thus becomes primarily an individual matter as to the nature of the employment of the particular employee. Some employers in a given industry may not be subject to the Act at all; other employers in the industry may be subject to the Act in respect to some of their employees, and not others; still other employers in the industry may be subject to the Act in respect to all their employees. . . . It is thus recognized that an employee may be subject to the Act one week and not the next. It is likewise true that some employees of an employer may be subject to the Act and others not."

It is patently clear from the foregoing that the present basis of coverage is defective from a legal, practical and economic viewpoint. It would appear far more feasible to use an *employer* rather than an *employee* test of coverage. Moreover, coverage should be determined on some basis longer than the present week-to-week basis. Finally, it would appear necessary to lessen the harsh implications of the Supreme Court Decision in the *Mabee* case.

(4) The "white collar" exemptions for executives, administrative and professional employees are left intact but a special ex-

emption from the overtime provisions is added for "any employee employed on a salary basis amounting to not less than \$100 a week." (Section 13(b)(3)).

Recommendation: The Subcommittee was divided on the desirability of establishing any dollar standard as the sole basis for determining eligibility for exemption. However, in preserving the present exemption for employees employed as executive, administrative and professional employees "as such terms are defined and delimited by regulations of the Administrator" and merely exempting employees employed on a salary basis of \$100 a week or more, the Ball Bill has failed to strike very effectively at the problem involved. In the first place, perhaps the greatest difficulty that has been encountered under the "white collar" exemptions is that of determining whether particular employees are or are not executive, administrative or professional within the meaning of the regulations prescribed by the Administrator. The regulations presently in effect are extremely vague and indefinite and as was disclosed by the recent hearings before an Administrative Officer, the administrative regulations have been construed far too restrictively by the Wage and Hour Division and there has been too much uncertainty and confusion. Despite this fact, the Ball Bill continues to invest the Administrator with the authority to issue regulations defining those terms. It is the opinion of the Subcommittee that it would be far more desirable to define the terms in the statute rather than to leave that function with the Wage and Hour Division. Some thought should be given in that connection to the adoption of the definitions now contained in the Taft-Hartley Act. Not only are the definitions contained in that Act more comprehensible and desirable, but the adoption of the same definitions for the F.L.S.A. would have the added virtue of establishing some uniformity in the two Acts. If the definitions of the L.M.R.A. are to be adopted, however, the Subcommittee feels the differences in the basic purposes of the two Acts will have to be accorded consideration. Thus, for example,

it may be advisable for purposes of the F.L.S.A. to continue to have minimum salary qualifications for exemption among other things.

An additional consideration of great importance is the fact that the Act, as it now stands, expressly gives the Administrator the authority to define the various categories of exempt "white collar" employees by "regulation." The extent to which restrictions have been placed upon the Courts in the construction of administrative "regulations" as distinguished from administrative opinions, is hereinafter treated separately.

(5) *The Administrator is given power "to make, issue, amend, and rescind—interpretative regulations defining and particularizing the terms and provisions" of the Act.* (Section 11(d)). That provision of the Ball Bill which proposes to confer upon the Administrator "power to make, issue, amend, and rescind—interpretative regulations defining and particularizing the terms and provisions" of the Act, deserves very careful consideration. In view of past experiences with the Act, there has been considerable agitation to empower the Administrator to render opinions that will bind the Courts and that will protect employers who have relied thereon. However desirable this may be, it appears to be quite different from the result sought to be accomplished by the Ball Bill. In giving the Administrator the power to issue "regulations" construing all of the terms and provisions of the Act, the Bill may handcuff the Courts in their construction of the Act to a serious degree. The United States Supreme Court has held that while administrative opinions are entitled to "some weight," in the case of administrative regulations, the Courts must,

"necessarily look to the administrative construction of the regulation if the meaning of the words used is in doubt. The intention of Congress or the principles of the Constitution in some situations may be relevant in the first instance in choosing between various constructions. But the ultimate criterion is the administrative interpretation,

which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation." (*Bowles v. Seminole Rock & Sand Co.* 325 U.S. 416).

Recommendation: The Subcommittee, therefore, strongly opposes the proposed delegation of blanket regulation-making authority to the Administrator.

(6) *The Bill extends the exemption for employees employed under annual wage contracts.* As you know, the present Act (Section 7(b)(2)) provides a partial exemption from the overtime provisions up to 12 hours daily or 56 hours weekly for employees employed "on an annual basis in pursuance of an Agreement . . . made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall not be employed more than two thousand and eighty hours during any period of 52 consecutive weeks." The Ball Bill would increase the permissible annual hours limitation from two thousand and eighty hours to two thousand and one hundred and forty hours, but would require overtime pay for all hours worked in excess of two thousand and eighty hours in any period of 52 consecutive weeks.

Recommendation: The Subcommittee approves this proposed extension of the exemption for annual wage agreements, as a most desirable objective.

Other Provisions of the Ball Bill regarding which no recommendations have been made by the Subcommittee.

(7) The exemption for employees employed in retail and service establishments is extended. It is now the administrative position that non-retail sales or servicing to the extent of more than 25% of the gross receipts of the establishment would defeat the exemption. It is also the position of the Wage and Hour Division that any amount of production or manufacturing of goods carried on in what would otherwise be an exempt retail or service establishment will defeat the exemption. The Ball Bill provides that the exemption will be defeated only if the non-retail sales or

services exceed 40% of the gross dollar volume of all sales or servicing. In addition, the Bill provides that the incidental production of goods in a retail and service establishment will not defeat the exemption unless the gross dollar value of the goods produced constitutes more than 10 per cent. of the gross dollar volume of all of the sales or servicing. (Section 13(a)(2)).

(8) The term "salary basis" is specifically defined for the first time (Section 3 (o)). Under the definition an employee is deemed to be on a "salary basis" if all or part of his pay is made up of a predetermined amount that is not subject to reduction because of the number of hours that he works, except that an employee will still be deemed to be on a "salary basis" if deductions are made for absences in violation of or in excess of time allowed under reasonable annual or sick-leave plans. This definition substantially accords with the administrative position which has recently been followed by the Wage and Hour Division.

(9) The Child Labor Provisions of the Act are extended. The present law merely prohibits the shipment or delivery for shipment in interstate commerce by a producer, manufacturer or dealer of goods produced in an establishment in which oppressive child labor was employed within 30 days prior to the time such goods were removed. The Ball Bill adds the additional provision that "no employer shall employ any oppressive child labor in commerce or in the production of goods for commerce." (Section 12(b)).

(10) The exemption from the overtime provisions of the Act for employees of motor carriers is narrowed down. The Law presently exempts from the overtime provisions "any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions" of the Motor Carrier Act of 1935. It is now settled that the Interstate Commerce Commission has power over not only drivers, helpers and other employees who ride on motor vehicles, but also over any employees whose work is

directly concerned with the safety of operation of motor vehicles in interstate transportation. This includes, therefore, mechanics, mechanics' helpers, loaders and employees in similar occupations who do not necessarily ride on motor vehicles. The Ball Bill, however, proposes to limit the exemption only to "drivers, helpers, and other employees who ride on a motor vehicle."

(11) The minimum wage provisions are made inapplicable to new employees during the first one hundred and sixty hours of their employment and to employees less than 18 years of age who have not completed their schooling and who are employed during vacation periods. Such employees are required to be paid "wages at not less than 50 cents an hour and at not less than the piece rates, if any, paid by (the) employer to experienced workers employed in the same occupation." (Section 14(a)).

(12) It extends the agricultural exemptions. (Section 3(f)).

(13) A special exemption is granted for employees employed in charitable institutions in giving or receiving instructions in native handicrafts and similar occupations. (Section 14(c)).

(14) The Bill also undertakes to amend the Walsh-Healey Act in several very significant respects. In the first place, the Bill would apply the Child Labor Standards of the F.L.S.A. to the Walsh-Healey Act. At present the Walsh-Healey Act merely prohibits the employment of male minors below 16 years of age and female minors below 18 years of age on work covered by the Act. The F.L.S.A. now prohibits the employment of male or female minors below 18 years of age in occupations declared by order of the Secretary of Labor to be particularly hazardous and prohibits the employment of male or female minors below 16 years of age in other occupations, except that minors between the ages of 14 and 16 may be employed in certain occupations other than manufacturing and mining, pursuant to special regulations issued by the Secretary of Labor, where such employment is confined to periods that will not interfere with schooling or health. Secondly, the Bill adopts the same definition of "regular rate of pay" used

in F.L.S.A. for the Walsh-Healey Act. This would constitute little change in past practice since the Administrator has long deemed F.L.S.A. interpretations of "regular rate of pay" to apply equally to the Walsh-Healey Act. Finally, the Bill provides that the two-year limitation period prescribed by the Portal-to-Portal Act is to be computed from the time the administrative hearing is commenced. (Section 4 of the Walsh-Healey Act.)

Respectfully submitted,

ROBERT A. LEVITT
Chairman

L. BYRON CHERRY

HERBERT J. FABRICANT

BENJAMIN MANDELKER

The Library

SIDNEY B. HILL, *Librarian*

LIST OF PUBLICATIONS PRESENTED BY AUTHOR MEMBERS DURING 1947-48

*"Oh, that my words were now written:
Oh, that they were printed in a book."*

This is the second annual compilation of books and articles contributed and written by members of the Association. Although the majority of the publications hew closely to the practical side of the law, there is enough diversity of subject matter to be representative of the literary traditions of the New York bar. These traditions began with the writings of Alexander Hamilton, John Jay and James Kent, and continue until today. The primary purpose of this list is to encourage those members, who hope to find the leisure, during the approaching summer season, to write that book or article, and present it to the library when they do.

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- Haggerty, Louis C. *Some Aspects of the Obligations of New York Fiduciaries with Respect to the Making and Retention of Investments*. Reprint. 1947. 16 *Fordham L. Rev.* 153-207.
- Hazard, John N. *Drafting the Nuremberg Indictment*. Reprint. 1947. 8 *Amer. Rev. of the Soviet Union*. 16-25.
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- Iserman, Theodore R. *Industrial Peace and the Wagner Act: How the Act Works and What To Do About It*. New York, McGraw-Hill Book Co., Inc. 1947. 91p.
- Justin, Jules J. *An Arbitrator Speaks on the Use of Reported Awards*. Reprint from *Labor Relations Reporter*, Dec. 29, 1947. Washington, D.C., Bureau of National Affairs. 1947. 8p.
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DEATHS REPORTED SINCE FEBRUARY 15, 1948

Elected

1920	William Harvey Smith
1924	James B. Grant
1924	J. Louis Kohl
1922	Edgar Bronson Tolman
1925	Arthur D. Hill
1930	Herbert S. Blake
1924	August Roche, Jr.
1930	Charles A. Curtin
1919	Isaac H. Levy
1932	Charles Cloyes Smith
1924	Harry Cole Bates
1925	W. Chantler Arbuckle
1881	Augustus S. Hutchins
1925	Robert Taylor Oliver
1906	John P. Bartlett
1947	L. C. Bertram
1944	John Francis Frazer
1947	Thomas A. Conway
1924	John Bright
1939	Russell L. Post
1925	Robert S. Gast
1924	Isaac F. Cohen
1924	Harold A. Ritz
1925	William D. Ahearn
1926	Otis Everett
1916	Philip W. Boardman
1906	Paul Fuller, Jr.
1897	John S. Sheppard

Died

July, 19, 1944
May 20, 1947
August 25, 1947
November 20, 1947
November 29, 1947
January 19, 1948
January 21, 1948
February 1948
February 9, 1948
February 11, 1948
February 14, 1948
February 18, 1948
February 19, 1948
February 20, 1948
March 3, 1948
March 11, 1948
March 18, 1948
March 21, 1948
March 24, 1948
April 1, 1948
April 4, 1948
April 10, 1948
April 10, 1948
April 12, 1948
April 12, 1948
April 29, 1948
May 12, 1948
May 14, 1948



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President

ALFRED A. COOK
New York

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Vice President
American Brake Shoe Company

RALPH S. DAMON
President
American Airlines, Inc.

FRANCIS B. DAVIS, Jr.
Chairman of the Board
United States Rubber Company

SAMUEL H. FISHER
Litchfield, Conn.

WILLIAM HALE HARKNESS
New York

HORACE HAVEMEYER, Jr.
President
The National Sugar Refining Co.

B. BREWSTER JENNINGS
President
Socony-Vacuum Oil Co., Inc.

J. SPENCER LOVE
Chairman of the Board
Burlington Mills Corporation

ADRIAN M. MASSIE
Vice President

HARRY T. PETERS
New York

SETON PORTER
President, National Distillers
Products Corporation

ROBERT C. REAM
President
American Re-Insurance Co.

MORRIS SAYRE
President
Corn Products Refining Co.

CHARLES J. STEWART
Vice President

VANDERBILT WEBB
Patterson, Belknap & Webb

